



March 17, 1999

Mr. Miles K. Risley  
City Attorney  
City of Victoria  
Legal Department  
P.O. Box 1758  
Victoria, Texas 77902-1758

OR99-0753

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 122776.

The City of Victoria (the “city”) received an open records request for “any patron and staff complaints, internal memos, e-mail messages, or incident reports about patrons accessing pornographic or sexually explicit material on public internet terminals.” You state that the city will release some responsive information to the requestor. You seek to withhold other responsive information pursuant to sections 552.107(1), 552.108, and 552.111 of the Government Code.

You contend that an “Executive Summary” that the city attorney prepared for “selected officials of the City and members of the City Council” is excepted from public disclosure pursuant to section 552.107(1) of the Government Code, which protects information “that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.” *See* Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney’s legal advice and client confidences. *Id.* The “Executive Summary” you submitted to this office consists entirely of the city attorney’s legal opinion and recommendations to his clients and as such may be withheld in its entirety pursuant to section 552.107(1).

You next contend that a “Supplementary Offense Report” pertaining to an allegation of the display of harmful material to a child comes under the protection of section 552.108 of the Government Code. Section 552.108(a)(1) of the Government Code excepts from required

public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” You have informed us that although this offense has been determined to be “unfounded,” the case is still considered to be pending and remains subject to prosecution. We therefore conclude that you have met your burden of establishing that the release of the information at issue could interfere with law enforcement. The city therefore may withhold most of the information at issue at this time pursuant to section 552.108(a)(1).

Section 552.108 does not, however, except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Because you have raised no other exception to disclosure with regard to this record, the city must release these types of information from the offense report to the requestor in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Finally, you contend that a memorandum prepared by the director of the city’s Library Advisory Board may be withheld from the public pursuant to section 552.111 of the Government Code. Section 552.111 of the Government Code excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity’s policymaking process. Open Records Decision No. 615 at 5 (1993). The purpose of this section is “to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes.” *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, *writ ref’d n.r.e.*) (emphasis added). In Open Records Decision No. 615, this office held that

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency’s policymaking functions do not encompass routine internal administrative and personnel matters . . . . [Emphasis in original.]

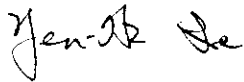
ORD 615 at 5. Section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. *Id.* If, however, the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may be withheld. Open Records Decision No. 313 (1982).

After reviewing the memorandum, we conclude that this document consists only of purely factual information. As such, this document may not be withheld pursuant to section

552.111. We therefore conclude that the city must release this document to the requestor in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Yen-Ha Le".

Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/RWP/nc

Ref.: ID# 122776

Enclosures: Submitted documents

cc: Mr. David Burt  
President  
Filtering Facts  
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(w/o enclosures)